'Accident' of Communist Disclaimer In Medicare Law Traced to Source

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The Communist disclaimer recently discovered in the medicare law apparently crept in by accident, without the knowledge of its congressional sponsors.

The subject was not mentioned in congressional debate. So it came as something of a surprise to learn that 2 million old people not covered by Social Security can receive hospital aid only if they can answer "No" to the following question put to them by the Department of Health, Education and Welfare:

"Are you now or have you been during the last twelve months a member of any organization which is required to register under the Internal Security Act of 1950 as a Communist-action organization, Communist-front organization or Communist-infiltrated organization?"

This is required by Section 103, though you would not know it just by reading the medicare act. It refers to a section of another law, which spells it out.

It appears that the provision first turned up in a 1962 medicare bill cosponsored by Sen. Jacob K. Javits, (R-N.Y.), who is opposed to such tests and has said he will try to repeal this one.

A check with Javit's office and Social Security officials provided this legislative history:

Javits and his cosponsors told legislative draftsmen what they wanted in the way of medicare and left them to put it into the technical language of legislation. The anonymous draftsmen apparently threw in the disclaimer and Javits did not spot it.

Then in 1963 the Kennedy Administration drew on this bill in drafting their own and picked up the disclaimer, apparently thinking congressional supporters wanted it. It went back to Congress as part of the Administration bill and was still in it when enacted this year.

The provision does not apply to the 17 million old people covered by Social Security. It covers the 2 million uninsured people over 65 who will receive aid from general funds rather than from the Social Security tax fund. And it applies only to hospital aid, not to the separate voluntary medical insurance that helps pay doctors' bills.

A Justice Department spokesman said "it appears that it would apply only to members of the Communist Party," because that is the only organization still in existence against which a final order to register has been issued.